

**BEFORE THE  
BUREAU OF AUTOMOTIVE REPAIR  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

**In the Matter of the Accusation Against:**

**EDGAR REGALADO, OWNER, T & R AUTOMOTIVE REPAIR**

**Automotive Repair Dealer Registration No. ARD 203264;**

**Smog Check Station License No. RC 203264,**

**and**

**EDGAR ROLANDO REGALADO**

**Smog Check Inspector License No. EO 315180; Smog Check**

**Repair Technician License No. EI 315180,**

**and**

**ROLANDO EDGAR REGALADO TURCIOS**

**Smog Check Inspector License No. EO 639995,**

**Respondents.**

**Case No. 79/20-11381**

**OAH No. 2021080616**

## **PROPOSED DECISION**

Jami A. Teagle-Burgos, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on April 12, 2022, via the Zoom application.

Michael M. Karimi, Deputy Attorney General, Department of Justice, State of California, represented complainant Patrick Dorais, Chief, Bureau of Automotive Repair (bureau), Department of Consumer Affairs (department), State of California.

Edgar Rolando Regalado, owner, T & R Automotive Repair, respondent,<sup>1</sup> represented himself, and testified with the assistance of a court-certified Spanish language interpreter.

In a Default Decision and Order for Rolando Edgar Regalado Turcios only, effective September 24, 2021, the allegations in the accusation against Mr. Turcios were found to be true, and Mr. Turcios's smog check inspector license was revoked. As such, the Sixth, Seventh, and Eighth Causes for Discipline in the accusation are not addressed in this decision, as they have been adjudicated, and the decision herein applies only to respondent Edgar Rolando Regalado, owner, T & R Automotive Repair.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on April 12, 2022.

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<sup>1</sup> Edgar Regalado, owner, T & R Automotive Repair, and Edgar Rolando Regalado, are the same individual. Rolando Edgar Regalado Turcios is the son of Edgar Rolando Regalado.

## **FACTUAL FINDINGS**

### **Registration and License History**

1. The bureau issued the following licenses to Edgar Regalado, owner, T & R Automotive Repair: Automotive Repair Dealer Registration No. ARD 203264 in 1999, which expires on January 31, 2023, unless renewed; Smog Check Station License No. RC 203264 on March 11, 1999, which expires on January 31, 2023, unless renewed; and STAR Station certification on February 17, 2017.

2. The bureau issued the following licenses to Edgar Rolando Regalado: Advanced Emission Specialist Technician License No. EA 315180, which was due to expire on September 30, 2013, but was cancelled on August 22, 2013, and pursuant to renewal by election said license was renewed as Smog Check Inspector License No. EO 315180, effective August 22, 2013, which expired on September 30, 2021; and Smog Check Repair Technician License No. EI 315180, on August 22, 2013, which expires on September 30, 2023, unless renewed.

### **Jurisdictional Background**

3. On March 5, 2021, complainant signed the accusation in his official capacity. The accusation alleged that Mr. Regalado's automotive repair dealer registration, smog check station license, smog check inspector license, and smog check repair technician license, should be disciplined for conduct that occurred between May 15, 2019, and September 8, 2020, on the following grounds:

- Pursuant to Business and Professions Code section 9884.7, subdivision (a)(1), Mr. Regalado's automotive repair dealer registration is subject to discipline because he made or authorized untrue or misleading statements when smog

certifications were issued for 13 vehicles, using the clean plugging method to issue smog certificates of compliance, and the vehicles were not inspected or tested as required by Health and Safety Code section 44012. (First Cause for Discipline);

- Pursuant to Business and Professions Code section 9884.7, subdivision (a)(4), Mr. Regalado's automotive repair dealer registration is subject to discipline because he committed acts which constitute fraud by issuing electronic certificates of compliance for 13 vehicles without performing bona fide inspections of the emission control devices and systems. (Second Cause for Discipline);
- Pursuant to Health and Safety Code section 44072.2, subdivision (a), Mr. Regalado's smog check station license is subject to discipline because he violated the Motor Vehicle Inspection Program and regulations adopted pursuant to it, based on violations of Health and Safety Code sections 44012 (failed to test emission controls systems and devices of 13 vehicles) and 44015 (issued electronic certificates of compliance, but failed to properly test and inspect the 13 vehicles.) (Third Cause for Discipline);
- Pursuant to Health and Safety Code sections 44072.2, subdivision (c), Mr. Regalado's smog check station license is subject to discipline because he failed to comply with California Code of Regulations, title 16, sections 3340.35, subdivision (c), (issued electronic certificates of compliance, but failed to inspect the 13 vehicles to ensure they had the required emission control equipment and devices installed and functioning correctly), and 3340.42 (failed to conduct required smog tests on 13 vehicles in accordance with the bureau's specifications.) (Fourth Cause for Discipline);

- Pursuant to Health and Safety Code sections 44072.2, subdivision (d), Mr. Regalado's smog check station license is subject to discipline because he committed acts involving dishonesty, fraud, or deceit by issuing electronic certificates of compliance for 13 vehicles without performing bona fide inspections of the emission control devices and systems. (Fifth Cause for Discipline).
- Pursuant to Health and Safety Code section 44072.2, subdivision (a), Mr. Regalado's smog check inspector and smog check repair technician licenses are subject to discipline because he violated Health and Safety Code section 44012 when he failed to test the emission controls systems and devices for 13 vehicles. (Ninth Cause for Discipline);
- Pursuant to Health and Safety Code section 44072.2, subdivision (c), Mr. Regalado's smog check inspector and smog check repair technician licenses are subject to discipline because he violated the California Code of Regulations, title 16, section 3340.30, subdivision (a) (failed to test and inspect 13 vehicles in accordance with Health and Safety Code section 44012), and section 3340.42 (failed to conduct required smog tests and inspections on 13 vehicles in accordance with the bureau's specifications.) (Tenth Cause for Discipline); and
- Pursuant to Health and Safety Code section 44072.2, subdivision (d), Mr. Regalado's smog check inspector and smog check repair technician licenses are subject to discipline because he committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic certificates of compliance for 13 vehicles without performing bona fide inspections of emission control devices and systems. (Eleventh Cause for Discipline).

## **Allegations of Clean Plugging**

4. Beginning March 9, 2015, California's Smog Check Program was updated to require the use of an On-Board Diagnostic Inspection System (OIS). The program ensures vehicles do not emit excessive and toxic pollutants that are harmful to individuals and the environment. It requires that vehicles be tested by licensed inspectors at licensed smog stations biannually and/or when re-registered in order to detect non-compliant vehicles, so they are repaired or taken off the road. The OIS is required for inspections of most gasoline vehicles that are model-year 2000 and newer. Inspectors are given a personal access code to access the emissions inspection system (EIS). The OIS system consists of a data acquisition device (DAD), computer, bar code scanner, and printer. The DAD is an on-board diagnostic (OBD) scan tool that retrieves OBD data from the vehicle being tested. The OIS software communicates with the bureau's Vehicle Information Database (VID). The inspector accesses the OIS platform with a personal code and scans the barcode on the vehicle for the vehicle identification number (VIN), scans any documents, verifies the vehicle being tested reflects the vehicle in the VID and verifies the odometer reading. The inspector connects the DAD to the vehicle to be certified. The On-Board Diagnostic, generation II, system (OBD II), test function occurs when the DAD is connected to the vehicle. The inspector is prompted to start the inspection by linking the DAD to the vehicle, and after the data is collected, the inspector is prompted to disconnect the DAD and turn off the vehicle's engine. The DAD transmits the vehicle's data to the OIS platform, which is sent to the VID. The inspector then conducts a visual and functional test of the vehicle.

5. "Clean plugging" refers to the use of another vehicle's properly functioning OBD II or another source, to generate passing diagnostic readings for the

purpose of issuing fraudulent smog certificates of compliance to vehicles that are not in smog compliance and/or not present for testing. The bureau conducted an investigation by reviewing information from the bureau's VID to determine if Mr. Regalado engaged in fraudulent smog check inspections. The bureau alleges that between May 15, 2019, and September 8, 2020, Mr. Regalado engaged in fraudulent smog check inspections when the 13 vehicles, identified below, were issued certificates of compliance by using the clean plugging method, resulting in fraudulent certificates of compliance. In the accusation, complainant submitted a chart alleging a pattern of discrepancies as shown by the information transmitted during the inspections and the documented information known about these vehicles, such as incorrect electronic vehicle identification number (eVIN) and incorrect parameter identification (PID) counts. The chart outlines the following alleged discrepancies for the 13 vehicles:

- Vehicle 1 – 2006 Subaru Impreza WRX Sport: certificate of compliance issued by T & R Automotive Repair under Mr. Turcios's smog check inspector license; eVIN transmitted did not match vehicle's VIN; reported protocol did not match expected protocol; and reported PID did not match expected PID.
- Vehicle 2 – 2011 GMC New Sierra C1500: certificate of compliance issued by T & R Automotive Repair under Mr. Regalado's smog check inspector license; and eVIN transmitted did not match vehicle's VIN.
- Vehicle 3 – 2007 Chevrolet Tahoe C1500: certificate of compliance issued by T & R Automotive Repair under Mr. Turcios's smog check inspector license; eVIN transmitted did not match vehicle's VIN; and reported PID did not match expected PID.

- Vehicle 4 – 2001 Chevrolet Silverado C1500: certificate of compliance issued by T & R Automotive Repair under Mr. Regalado's smog check inspector license; and eVIN transmitted did not match vehicle's VIN.
- Vehicle 5 – 2005 Honda Accord EX: certificate of compliance issued by T & R Automotive Repair under Mr. Turcios's smog check inspector license; eVIN transmitted did not match vehicle's VIN; reported protocol did not match expected protocol; and reported PID did not match expected PID.
- Vehicle 6 – 2004 GMC New Sierra C1500: certificate of compliance issued by T & R Automotive Repair under Mr. Turcios's smog check inspector license; eVIN transmitted did not match vehicle's VIN; reported protocol did not match expected protocol; and reported PID did not match expected PID.
- Vehicle 7 – 2005 Toyota Scion TC: certificate of compliance issued by T & R Automotive Repair under Mr. Turcios's smog check inspector license; eVIN transmitted did not match vehicle's VIN; reported protocol did not match expected protocol; and reported PID did not match expected PID.
- Vehicle 8 – 2001 Chevrolet Silverado C1500: certificate of compliance issued by T & R Automotive Repair under Mr. Turcios's smog check inspector license; and eVIN transmitted did not match vehicle's VIN.
- Vehicle 9 – 2001 Chevrolet Silverado C1500: certificate of compliance issued by T & R Automotive Repair under Mr. Turcios's smog check inspector license; and eVIN transmitted did not match vehicle's VIN.



- Vehicle 10 – 2000 Chevrolet Suburban C1500: certificate of compliance issued by T & R Automotive Repair under Mr. Turcios's smog check inspector license; and eVIN transmitted did not match vehicle's VIN.
- Vehicle 11 – 2005 Ford Explorer XLT: certificate of compliance issued by T & R Automotive Repair under Mr. Turcios's smog check inspector license; and eVIN transmitted did not match vehicle's VIN.
- Vehicle 12 – 2002 Chevrolet Silverado C1500: certificate of compliance issued by T & R Automotive Repair under Mr. Turcios's smog check inspector license; and eVIN transmitted did not match vehicle's VIN.
- Vehicle 13 – 2005 Toyota Tundra Access Cab SR5: certificate of compliance issued by T & R Automotive Repair under Mr. Turcios's smog check inspector license; eVIN was not transmitted; reported protocol did not match expected protocol; and reported PID did not match expected PID.

### **Ian Evans's Investigation Report, Declaration, and Testimony**

6. The following is a summary of Ian Evans's investigation report, declaration, and testimony. He is employed as a Program Representative II for the bureau where he has worked since 2006. He has completed various Automotive Service Excellence classes, and he has a smog check inspector license and smog check repair technician license. He underwent an extensive training program for his current position. He is familiar with the smog check program and relayed the importance of identifying vehicles that may not be in a condition to pass a smog test and ensuring the air quality in California is the best that can be maintained. He is familiar with clean plugging as being a method to evade the smog check program by using a substitute vehicle, or a device, in place of the vehicle actually being tested. This occurs when an

inspector inputs the information of the vehicle being inspected into the OIS, but in fact the DAD has been attached to a substitute vehicle or to a device. The primary motivation for clean plugging is to charge a consumer a higher fee for a vehicle that would not normally pass a smog test; and the secondary motivation is to do a favor for a family member or friend. He is not familiar with any situation where a smog technician would unknowingly evade the requirements of the smog check program. The bureau identifies potential fraudulent inspections by reviewing the data transmitted into the OIS platform and comparing the data to similar vehicles with the same year, make, model and engine family. If there are discrepancies, a further investigation will be conducted.

7. Mr. Evans conducted the investigation herein, and found indications of fraudulent inspections due to unexpected data for 13 vehicles that received smog certificates from T & R Automotive Repair. For 12 of the 13 vehicles, the eVIN transmitted was incorrect. Moreover, the same substitute vehicle was used in 6 of the 13 incidents of clean plugging, and Mr. Regalado was the smog inspector in 2 of these incidents. A summary of his findings of clean plugging is below:

Concerning Vehicle 1, the passing smog test on May 15, 2019, had incorrect data for eVIN, protocol, and PID, but the vehicle's previous passing smog test on April 25, 2017, at Dao Smog Test Only did have the expected data for the subject vehicle.

Concerning Vehicle 2, the passing smog test on August 8, 2019, had an incorrect eVIN, which was for the substitute vehicle – a 2002 Chevy Suburban C1500 - that had been sold to a recycling yard in 2002 according to a DMV report, had no additional smog testing history, and was the substitute vehicle used in 6 of the 13 incidents of clean plugging. Mr. Regalado was the smog test technician.

Concerning Vehicle 3, the passing smog test on August 25, 2019, had incorrect data for eVIN and PID, but the vehicle's previous passing smog test on June 8, 2017, at LTD Auto Repair had the expected data for the subject vehicle as was rendered in testing from like vehicles.

Concerning Vehicle 4, the passing smog test on August 22, 2019, had an incorrect eVIN, which was the same eVIN of the substitute vehicle (2002 Chevy Suburban C1500 ) that was used in 6 of the 13 incidents of clean plugging. Mr. Regalado was the smog test technician.

Concerning Vehicle 5, the passing smog test on December 9, 2019, had incorrect data for eVIN, protocol, and PID, which was not the expected data as was rendered in testing from like vehicles.

Concerning Vehicle 6, the passing smog test on February 18, 2020, had incorrect data for eVIN, protocol, and PID, which was not the expected data as was rendered in testing from like vehicles.

Concerning Vehicle 7, the passing smog test on February 19, 2020, had incorrect data for eVIN, protocol, and PID, which was not the expected data as was rendered in testing from like vehicles.

Concerning Vehicle 8, the passing smog test on February 28, 2020, at T & R Automotive Repair, had an incorrect eVIN, which was the same eVIN of the substitute vehicle (2002 Chevy Suburban C1500) that was used in 6 of the 13 incidents of clean plugging.

Concerning Vehicle 9, the passing smog test on March 5, 2020, at T & R Automotive Repair, had an incorrect eVIN, which was the same eVIN of the substitute

vehicle (2002 Chevy Suburban C1500) that was used in 6 of the 13 incidents of clean plugging.

Concerning Vehicle 10, the passing smog test on April 11, 2020, at T & R Automotive Repair, had an incorrect eVIN, which was the same eVIN of the substitute vehicle (2002 Chevy Suburban C1500) that was used in 6 of the 13 incidents of clean plugging. In addition, due to the age of this subject vehicle, the manufacturer had not been required to input an eVIN in the powertrain, and the comparative vehicles did not have eVINs programmed into their powertrains.

Concerning Vehicle 11, the passing smog test on April 25, 2020, at T & R Automotive Repair, had incorrect data for eVIN, which was not the expected data as was rendered in testing from like vehicles.

Concerning Vehicle 12, the passing smog test on May 6, 2020, at T & R Automotive Repair, had an incorrect eVIN, which was the same eVIN of the substitute vehicle (2002 Chevy Suburban C1500) that was used in 6 of the 13 incidents of clean plugging.

Concerning Vehicle 13, the passing smog test on September 8, 2020, at T & R Automotive Repair, did not transmit an eVIN, which in itself is not an indicator of a fraudulent inspection. However, the passing smog test transmitted incorrect data for PID and protocol, which was not the expected data as was rendered in testing from like vehicles.

### **Mr. Regalado's Testimony**

8. The following is a summary of Mr. Regalado's testimony. He has been in business as T & R Automotive Repair since 1990 or 1991, and he first was licensed to

perform smog tests around 1990. He later got his license to be a smog check inspector and repair technician in 1998 or 2000. He received a citation in about 2000, although he cannot remember exactly when because it has been many years. Around 2014 his "score" went down with the bureau, and his STAR certification was taken away, but his "score" went back up and he got his STAR certification back a couple years later. He has never been disciplined by the bureau.

9. Mr. Regalado understood the reason why he was at the hearing, but he "did not do what they said" he did. He has done everything correctly, and he did not do any fraudulent work. He stated, "It wasn't due to me doing any of that." There could have been an issue with his customers "replacing computers" or some type of "human error." He did not follow-up with any of these customers who had the vehicles that were allegedly clean plugged. The bureau asked him for certain invoices, and his son gave them to the bureau. He did not make copies of these invoices. Customers have asked him for "favors" to pass their vehicles, but he has "always rejected their requests." He suspended the "person that did those things" and "he is not working for [me] anymore." The person he was referring to is Mr. Turcios, who is his son. He asked his son about the allegations, and his son said he did not do anything fraudulent. He was not in the shop a lot since 2019 because of COVID. He will be "more careful" and take "other precautions so that mistakes do not happen again." He understands this is "not a game," and he is going to install a camera at his shop.

10. Mr. Regalado stated, "This accusation is very difficult for me . . . if you lower the amount of work that I have . . . I will be really hit hard [because of] financial commitments [of] mortgage, house, and payments for machinery." The general repairs at his shop consist of about 60 percent of his business, and smog checks consist of the

other 30 to 40 percent. He is asking to not be disciplined too harshly, and if he can have another chance so he can do his work better.

## **Cost Recovery**

11. Complainant sought recovery of investigation costs of \$1,698.03 and \$915.61, and enforcement costs of \$7,347.50, for a total of \$9,961.14.

12. Ian Evans, Program Representative II, signed a declaration with attached Case Hours and Costs Spreadsheets that listed the time he spent between September 10, 2020, and September 29, 2020, performing "Documents/Evidence" (5 hours), "Report Writing" (10 hours), and "Review" (4 hours on this matter.) The total time he spent was 19 hours and at the hourly rate of \$89.37, amounted to \$1,698.03. The evidence of investigative costs complied with California Code of Regulations, title 1, section 1042, subdivision (b)(1), and the \$1,698.03 costs requested were reasonable.

13. Mark Casillas signed a declaration with attached Case Hours and Costs Spreadsheets that listed the time he spent between September 9, 2020, and September 15, 2020, performing "Review" (2.5 hours) and "Case Review" (7 hours) on this matter. The total time he spent was 9.5 hours and at the hourly rate of \$96.38, amounted to \$915.61. The evidence of investigative costs complied with California Code of Regulations, title 1, section 1042, subdivision (b)(1), and the \$915.61 costs requested were reasonable.

14. The Deputy Attorney General who prosecuted the case executed a declaration requesting enforcement costs of \$7,347.50 through April 4, 2022. Attached to his declaration was a document entitled "Matter Time Activity by Professional Type," that identified the tasks performed, the time spent on each task, and the hourly rate of the persons performing the tasks for the costs up through April 4, 2022. The

declaration and the attachment seeking enforcement costs of \$7,347.50 complied with the requirements of California Code of Regulations, title 1, section 1042, subdivision (b)(2), and those prosecution costs were reasonable.

15. Mr. Regalado made arguments regarding his ability to pay costs to the bureau. It is also noted, that because Mr. Regalado's smog check station license is revoked herein, he will not be able to earn income performing smog inspections.

## **LEGAL CONCLUSIONS**

### **Public Protection**

1. "Protection of the public shall be the highest priority for the Bureau of Automotive Repair in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount." (Bus. & Prof. Code, § 9880.3.)

2. Health and Safety Code section 43000 states that air pollutants from automobiles are "the primary cause of air pollution"; elimination of such air pollutants is necessary to protect and preserve "the public health and well-being" and to prevent "irritation to the senses, interference with visibility, and damage to vegetation and property"; and "the state has a responsibility to establish uniform procedures for compliance with standards which control or eliminate those air pollutants." California's Motor Vehicle Inspection Program was enacted to assure that California meets or exceeds emission reduction targets. (Health & Saf. Code, § 44000, et seq.) Smog testing and related repairs are conducted by bureau licensed smog check stations and smog check technicians. (Health & Saf. Code, § 44014.)

## **Burden and Standard of Proof**

3. Complainant bears the burden of proof of establishing that the charges in the accusation are true. (*Martin v. State Personnel Board* (1972) 26 Cal.App.3d 573, 582.)

4. The standard of proof in proceedings to discipline automotive repair dealers, smog check stations, and/or smog check technicians is the preponderance of the evidence. (*Imports Performance v. Department of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911, 916-918.)

5. "'Preponderance of the evidence means evidence that has more convincing force than that opposed to it.' [Citations.]" (*Glage v. Hawes Firearms Company* (1990) 226 Cal.App.3d 314, 324-325.) "The sole focus of the legal definition of 'preponderance' in the phrase 'preponderance of the evidence' is on the quality of the evidence. The quantity of the evidence presented by each side is irrelevant." (*Ibid.*, italics in original.) "If the evidence is so evenly balanced that you are unable to say that the evidence on either side of an issue preponderates, your finding on that issue must be against the party who had the burden of proving it [citation]." (*People v. Mabini* (2001) 92 Cal.App.4th 654, 663.)

6. In disciplinary proceedings, the burden is on the respondent to produce positive evidence of rehabilitation. (*Epstein v. California Horse Racing Board* (1963) 222 Cal.App.2d 831, 842-843.)

## **Disciplinary Authority**

7. Business and Professions Code section 9884.7 provides:



(a) The director, where the automotive repair dealer<sup>2</sup> cannot show there was a bona fide error, may deny, suspend, revoke, or place on probation the registration of an automotive repair dealer for any of the following acts or omissions related to the conduct of the business of the automotive repair dealer, which are done by the automotive repair dealer or any automotive technician, employee, partner, officer, or member of the automotive repair dealer.

(1) Making or authorizing in any manner or by any means whatever any statement written or oral which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.

[¶] . . . [¶]

(4) Any other conduct that constitutes fraud.

[¶] . . . [¶]

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<sup>2</sup> An "automotive repair dealer" is a "person who, for compensation, engages in the business of repairing or diagnosing malfunctions of motor vehicles." (Bus. & Prof. Code, § 9880.1, subd. (a).) Automotive repair dealers are governed by the Automotive Repair Act. (Bus. & Prof. Code, §§ 9880, et seq.)

(6) Failure in any material respect to comply with the provisions of this chapter or regulations adopted pursuant to it.

[¶] . . . [¶]

(c) Notwithstanding subdivision (b), the director may suspend, revoke, or place on probation the registration for all places of business operated in this state by an automotive repair dealer upon a finding that the automotive repair dealer has, or is, engaged in a course of repeated and willful violations of this chapter, or regulations adopted pursuant to it.

8. Business and Professions Code section 9884.13 states, in pertinent part, that the expiration of a valid registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary proceeding against an automotive repair dealer or to render a decision invalidating a registration temporarily or permanently.

9. Health and Safety Code section 44072.2 provides:

The director may suspend, revoke, or take other disciplinary action against a license as provided in this article if the licensee, or any partner, officer, or director thereof, does any of the following:

(a) Violates any section of this chapter and the regulations adopted pursuant to it, which related to the licensed activities.

[¶] . . . [¶]

(c) Violates any of the regulations adopted by the director pursuant to this chapter.

(d) Commits any act involving dishonesty, fraud, or deceit whereby another is injured. . . .

10. Health and Safety Code section 44072.8 provides:

When a license has been revoked or suspended following a hearing under this article, any additional license issued under this chapter in the name of the licensee may be likewise revoked or suspended by the director.

11. Health and Safety Code section 44072.10, subdivision (c), states, "the department shall revoke the license of any smog check technician or station licensee who fraudulently certifies vehicles or participates in the fraudulent inspection of vehicles. A fraudulent inspection includes, but is not limited to, all of the following:

(1) Clean piping, as defined by the department.

(2) Tampering with a vehicle emission control system or test analyzer system.

(3) Tampering with a vehicle in a manner that would cause the vehicle to falsely pass or falsely fail an inspection.

(4) Intentional or willful violation of this chapter or any regulation, standard, or procedure of the department implementing this chapter.

## **Statutory and Regulatory Violations**

### **STATUTES**

12. Health and Safety Code section 44012, provides that tests at smog check stations "shall be performed in accordance with procedures prescribed by the department and may require . . . testing utilizing a vehicle's onboard diagnostic system, or other appropriate test procedures as determined by the department in consultation with the state board. The department shall implement testing using onboard diagnostic systems, in lieu of loaded mode dynamometer or two-speed idle testing, on model year 2000 and newer vehicles . . . ."

13. Health and Safety Code section 44015, subdivisions (a) and (b), requires that a "licensed smog check station shall not issue a certificate of compliance, except as authorized by this chapter, to . . . " a vehicle that has been tampered with," and "a smog check station licensed to issue certificates shall issue a certificate of compliance or a certificate of noncompliance."

14. Health and Safety Code section 44059 states:

The willful making of any false statement or entry with regard to a material matter in any oath, affidavit, certificate of compliance or noncompliance, or application form which is required by this chapter or Chapter 20.3 (commencing with Section 9880) of Division 3 of the Business and Professions Code, constitutes perjury and is punishable as provided in the Penal Code.

15. Health and Safety Code section 44032 provides:

No person shall perform, for compensation, tests or repairs of emission control devices or systems of motor vehicles required by this chapter unless the person performing the test or repair is a qualified smog check technician and the test or repair is performed at a licensed smog check station. Qualified technicians shall perform tests of emission control devices and systems in accordance with Section 44012.

## **REGULATIONS**

16. California Code of Regulations title 16, section 3340.24, subdivision (c), states, "The bureau may suspend or revoke the license of or pursue other legal action against a licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a certificate of noncompliance."

17. California Code of Regulations title 16, section 3340.30, states, "A smog check technician shall comply with the following requirements at all times while licensed."

(a) A licensed technician shall inspect, test and repair vehicles in accordance with section 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section 3340.42 of this article.

18. California Code of Regulations, title 16, section 3340.35, subdivision (c), requires a licensed smog check station to "issue a certificate of compliance or noncompliance to the owner or operator of any vehicle that has been inspected in accordance with the procedures specified in section 3340.42 of this article and has all

the required emission control equipment and devices installed and functioning correctly."

19. California Code of Regulations, title 16, section 3340.41, subdivision (c), mandates that:

No person shall enter into . . . the OBD Inspection System any vehicle identification information or emission control system identification data for any vehicle other than the one being tested. Nor shall any person knowingly enter into . . . the OBD Inspection System any false information about the vehicle being tested.

20. California Code of Regulations, title 16, section 3340.42, states:

Smog check inspection methods are prescribed in the Smog Check Manual, referenced by section 3340.45.

(a) All vehicles subject to a smog check inspection, shall receive one of the following test methods:

[1] . . . [1]

(3) An OBD-focused test, shall be the test method used to inspect gasoline-powered vehicles 2000 model-year and newer, and diesel-powered vehicles 1998 model-year and newer. The OBD test failure criteria are specified in section 3340.42.2.

(b) In addition to subsection (a), all vehicles subject to the smog check program shall receive the following:

(1) A visual inspection of emission control components and systems to verify the vehicle's emission control systems are properly installed.

(2) A functional inspection of emission control systems as specified in the Smog Check Manual, referenced by section 3340.45, which may include an OBD test, to verify their proper operation.

(c) The bureau may require any combination of the inspection methods in sections (a) and (b) under any of the following circumstances:

(1) Vehicles that the department randomly selects pursuant to Health and Safety Code section 44014.7 as a means of identifying potential operational problems with vehicle OBD systems.

(2) Vehicles identified by the bureau as being operationally or physically incompatible with inspection equipment.

(3) Vehicles with OBD systems that have demonstrated operational problems.

(d) Pursuant to section 39032.5 of the Health and Safety Code, gross polluter standards are as follows:

(1) A gross polluter means a vehicle with excess hydrocarbon, carbon monoxide, or oxides of nitrogen emissions pursuant to the gross polluter emissions standards included in the tables described in subsection (a), as applicable.

(2) Vehicles with emission levels exceeding the emission standards for gross polluters during an initial inspection will be considered gross polluters and the provisions pertaining to gross polluting vehicles will apply, including, but not limited to, sections 44014.5, 44015, and 44081 of the Health and Safety Code.

(3) A gross polluting vehicle shall not be passed or issued a certificate of compliance until the vehicle's emissions are reduced to or below the applicable emissions standards for the vehicle included in the tables described in subsection (a), as applicable. However, the provisions described in section 44017 of the Health and Safety Code may apply.

(4) This subsection applies in all program areas statewide to vehicles requiring inspection pursuant to sections 44005 and 44011 of the Health and Safety Code.

### **Case Law Regarding Fraud**

21. "There is no absolute or fixed rule for determining what facts will constitute fraud; whether or not it is found depends upon the particular facts of the case under inquiry. Fraud may be proved by direct evidence or it may be inferred from



all of the circumstances in the case." (*Ach v. Finkelstein* (1968) 264 Cal.App.2d 667, 674-675.) For example, in an appeal from the decision issued in an administrative proceeding regarding a private investigator's license, the appellate court explained "[f]raud embraces multifarious means whereby one person gains an advantage over another and means in effect bad faith, dishonesty or overreaching. . . . 'It is a generic term which embraces all the multifarious means which human ingenuity can devise and are resorted to by one individual to get an advantage over another. No definite and invariable rule can be laid down as a general proposition defining fraud, as it includes all surprise, trick, cunning, dissembling and unfair ways by which another is cheated.' [Citations.]" (*Wayne v. Bureau of Private Investigators and Adjusters, Department of Professional and Vocational Standards* (1962) 201 Cal.App.2d 427, 437-438.)

**Cause Exists to Discipline Mr. Regalado's Automotive Repair Dealer Registration, Smog Check Station License, Smog Check Inspector License, and Smog Check Repair Technician License**

22. Mr. Regalado bears the responsibility for what happens at his shop. The owner of a license is obligated to see that the license is not used in violation of the law. If a licensee elects to operate his business through employees, the licensee must be responsible to the licensing authority for their conduct and is responsible for the acts of his agents or employees done in the course of his business. A licensee may not insulate himself from regulation by electing to function through employees or independent contractors. (*Rob-Mac, Inc. v. Dept. of Motor Vehicles* (1983) 148 Cal.App.3d 793, 797.)

23. The 13 incidents of clean plugging occurred at Mr. Regalado's smog check station and under his watch. His registration and licenses are subject to

discipline due to untrue and misleading statements certifying the vehicles had passed smog inspections when they had not been properly inspected; issuance of smog certificates of compliance without performing bona fide inspections by entering false information in the emissions inspection system; committing dishonest, fraudulent, and deceitful acts by issuing smog certificates without performing bona fide inspections; failure to perform emission control tests in accordance with the required procedures; and signing smog certificates of compliance under penalty of perjury, thereby falsely certifying that proper smog inspections had been performed.

24. As such, cause exists to discipline Mr. Regalado's automotive repair dealer registration, smog check station license, and smog check inspector and smog check repair technician licenses, pursuant to Business and Professions Code sections 9884.7, subdivisions (a)(1) (untrue or misleading statements) and (a)(4) (fraud), and Health and Safety Code sections 44072.2, subdivisions (a) (failure to comply with the Motor Vehicle Inspection Program), (c) (failure to comply with the regulations pursuant to the Motor Vehicle Inspection Program), and (d) (dishonesty, fraud or deceit).

### **Appropriate Level of Discipline**

25. Motor vehicle engine exhaust pollution has been shown to create health hazards for human beings, with the hazards increasing with the level of pollution. Mr. Regalado's actions in clean plugging the 13 subject vehicles resulted in the issuance of fraudulent certificates of compliance allowing multiple vehicles to further pollute the air of California thereby injuring the public.

26. California Code of Regulations, title 16, section 3395.4, provides that in reaching a decision on a disciplinary action, the bureau must consider the disciplinary guidelines entitled "Guidelines for Disciplinary Orders and Terms of Probation" [Rev.

March 2016]. These guidelines provide the recommended sanctions for various violations. The recommended discipline for issuing fraudulent inspections (Health & Saf. Code, § 44072.2, subd. (d)) is revocation. Factors in aggravation and mitigation may be considered when fashioning the appropriate measure of discipline.

27. Business and Professions Code section 9889.9 and Health and Safety Code section 44072.8 provide that when a license has been revoked following a hearing, any additional license issued under the Automotive Repair Act and Motor Vehicle Inspection Program in the name of the licensee may be likewise revoked or suspended by the department's director. Revocation of the additional licenses is not mandatory.

28. In this case, Mr. Regalado's explanations for the 13 incidents of clean plugging were inconsistent with the evidence. He stated for certain that he did not perform any of the fraudulent inspections, yet he was listed as the smog check inspector in two of the incidents. He was not sure if his son was responsible for the incidents of clean plugging because his son had told him he did not do anything fraudulent, yet his son is listed as the smog check inspector in 11 of the incidents. In addition, it is a glaring alarm that the same substitute vehicle was used in 6 of the 13 incidents of clean plugging. Moreover, despite his explanation that customers may have replaced the computers for the vehicles that were clean plugged, he did not contact those customers and ask if this had indeed occurred. The computer replacement explanation is also eroded by the fact the same substitute vehicle was used in 6 of the 13 incidents of clean plugging. Moreover, he stated his son gave copies of the invoices to Mr. Evans, and he made no copies of the invoices, yet Mr. Evans testified on rebuttal that he did return the invoices to respondent. Finally, his

explanation that he was not in the shop often because of COVID is not persuasive because he is ultimately the person who is responsible for his smog check station.

29. The next question is what, if any, rehabilitative and/or mitigating evidence has been presented. What is concerning is that Mr. Regalado did not admit to any wrongdoing, yet it is evident by the record that fraudulent smog checks occurred under his watch by him and/or his son. However, he has been in business since the 1990's, and he has no history of disciplinary action against him. This is the first disciplinary action filed against him, which is quite notable. In addition, he asked for a chance to make changes and to ensure mistakes never happen again. He indicated that he would install a camera at his smog check station.

30. Based on the above, the appropriate discipline in this case is the revocation of Mr. Regalado's automotive repair dealer registration, smog check station license, and smog check inspector and smog check repair technician licenses. However, the revocation of the automotive repair dealer registration shall be stayed and placed on five years' probation with terms and conditions.

## **Costs**

31. Business and Professions Code section 125.3, subdivision (a), authorizes an administrative law judge to direct a licensee who has violated the applicable licensing act to pay a sum not to exceed the reasonable costs of investigation and prosecution. The certification of costs in all respects satisfied the requirements of California Code of Regulations, title 1, section 1042, subdivision (b), and the certification supports a finding that costs in the amount of \$9,961.14 are reasonable in both the nature and extent of the work performed.

32. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, the California Supreme Court set forth five factors to be considered in determining whether a particular licensee should be ordered to pay the reasonable costs of investigation and prosecution under statutes like Business and professions Code section 125.3. Those factors are: whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his or her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate in light of the alleged misconduct. (*Ibid.*)

33. Applying the *Zuckerman* factors to this case leads to the following conclusions: Mr. Regalado was not successful in getting some of the charges reduced; he asserted a good faith belief in the merits of his position; he raised a colorable challenge to the proposed discipline; he expressed not having financial ability to pay costs if his smog check station license is revoked, and pursuant to the revocation herein, he will no longer be able to perform smog testing and this will decrease his income and ability to pay costs; and the scope of the investigation was appropriate in light of the alleged misconduct.

34. In consideration of all the factors of this case, Mr. Regalado shall pay to the bureau \$2,490.28.

### **ORDER**

1. Respondent Edgar Rolando Regalado, owner, T & R Automotive Repair, shall pay complainant's costs of investigation and enforcement of \$2,490.28, which may be paid on such terms as may be determined by the bureau.

2. Smog Check Station License No. RC 203264 issued to respondent Edgar Regalado, owner, T & R Automotive Repair, is revoked.

3. Smog Check Inspector License No. EO 315180 issued to respondent Edgar Rolando Regalado, is revoked.

4. Smog Check Repair Technician License No. EO 315180 issued to respondent Edgar Rolando Regalado, is revoked.

5. Automotive Repair Dealer Registration No. ARD 203264 issued to respondent Edgar Rolando Regalado, owner, T & R Automotive Repair, is revoked. However, revocation of Automotive Repair Dealer Registration No. ARD 203264 is stayed, and Automotive Repair Dealer Registration No. ARD 203264 is placed on probation for five years on the following terms and conditions.

**A. OBEY ALL LAWS**

During the period of probation, respondent shall comply with all federal and state statutes, regulations and rules governing all Bureau of Automotive Repair (BAR) registrations and licenses held by respondent.

**B. QUARTERLY REPORTING**

During the period of probation, respondent shall report either by personal appearance of its partners, owners, or officers or in writing as determined by BAR on a schedule set by BAR, but no more frequently than once each calendar quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.

### **C. REPORT FINANCIAL INTERESTS**

Respondent shall, within 30 days of the effective date of the decision and within 30 days from the date of any request by BAR during the period of probation, report any financial interest which respondent or any partners, officers, or owners of any respondent facility may have in any other business required to be registered pursuant to Section 9884.6 of the Business and Professions Code.

### **D. ACCESS TO EXAMINE VEHICLES AND RECORDS**

Respondent shall provide BAR representatives unrestricted access to examine all vehicles (including parts) undergoing service, inspection, or repairs, up to and including the point of completion. Respondent shall also provide BAR representatives unrestricted access to all records pursuant to BAR laws and regulations.

### **E. TOLLING OF PROBATION**

If, during probation, respondent does business elsewhere or otherwise ceases to do business in the jurisdiction of California, respondent shall notify BAR in writing within 10 days of the dates of departure and return, and of the dates of cessation and resumption of business in California.

All provisions of probation other than cost reimbursement requirements, restitution requirements, training requirements, and that respondent obeys all laws, shall be held in abeyance during any period of time of 30 days or more in which respondent is not engaging in business within the jurisdiction of California. All provisions of probation shall recommence on the effective date of resumption of business in California. Any period of time of 30 days or more in which respondent is not engaging in business within the jurisdiction of California shall not apply to the

reduction of this probationary period or to any period of actual suspension not previously completed. Tolling is not available if business or work relevant to the probationary license or registration is conducted or performed during the tolling period.

#### **F. VIOLATION OF PROBATION**

If respondent violates or fails to comply with the terms and conditions of probation in any respect, the Director, after giving notice and opportunity to be heard, may set aside the stay order and carry out the disciplinary order provided in the decision. Once respondent is served notice of BAR's intent to set aside the stay, the Director shall maintain jurisdiction, and the period of probation shall be extended until final resolution of the matter.

#### **G. MAINTAIN VALID LICENSE**

Respondent shall, at all times while on probation, maintain a current and active registration with BAR, including any period during which suspension or probation is tolled. If respondent's registration is expired at the time the decision becomes effective, the registration must be renewed by respondents within 30 days of that date. If respondent's registration expires during a term of probation, by operation of law or otherwise, then upon renewal of respondent's registration, respondent shall be subject to any and all terms and conditions of probation not previously satisfied. Failure to maintain a current and active registration during the period of probation shall also constitute a violation of probation.



## **H. COST RECOVERY**

Respondent Edgar Rolando Regalado, owner, T & R Automotive Repair, shall pay \$2,490.28 to BAR for the reasonable costs of the investigation and enforcement of Case No. 79/20-5153 (OAH Case No. 2021090356). Respondent shall make such payment as follows: Respondent may pay the costs in a lump sum or according to a payment plan acceptable to BAR during the term of probation. Any agreement for a scheduled payment plan shall require full payment to be completed no later than six (6) months before probation terminates. Respondent shall make payment by check or money order payable to the "Bureau of Automotive Repair" and shall indicate on the check or money order that it is for cost recovery payment for Case No. Case No. 79/20-11381 (OAH Case No. 2021080616). Any order for payment of cost recovery shall remain in effect whether or not probation is tolled. Probation shall not terminate until full cost recovery payment has been made. BAR reserves the right to pursue any other lawful measures in collecting on the costs ordered and past due, in addition to taking action based upon the violation of probation.

## **I. COMPLETION OF PROBATION**

Upon successful completion of probation, respondent's affected registration will be fully restored or issued without restriction, if respondent meets all current requirements for registration and has paid all outstanding fees, monetary penalties, or cost recovery owed to BAR.

## **J. LICENSE SURRENDER**

Following the effective date of a decision that orders a stay of invalidation or revocation, if respondent ceases business operations or is otherwise unable to satisfy the terms and conditions of probation, respondent may request that the stay be

vacated. Such request shall be made in writing to BAR. The Director and the BAR Chief reserve the right to evaluate respondent's request and to exercise discretion whether to grant the request or take any other action deemed appropriate or reasonable under the circumstances. Upon formal granting of the request, the Director will vacate the stay order and carry out the disciplinary order provided in the decision.

Respondent may not petition the Director for reinstatement of the surrendered registration or apply for a new registration or license under the jurisdiction of BAR at any time before the date of the originally scheduled completion of probation. If respondent applies to BAR for a registration or license at any time after that date, respondent must meet all current requirements for registration or licensure and pay all outstanding fees or cost recovery owed to BAR and left outstanding at the time of surrender.

#### **K. TRAINING COURSES**

Within 60 days of the effective date of this decision, all respondent's officers and employees shall attend a "Write It Right" presentation provided by a BAR Representative, at the location, date, and time determined by BAR.

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Within 180 days of the effective date of a decision, all respondent's officers and employees shall complete ordered coursework or training that is acceptable to BAR and relevant to the adjudicated violations, which shall include training regarding how to properly complete drive cycles to reset vehicles' monitors after the completing repairs and any other topics ordered by BAR. Respondent shall submit to BAR satisfactory evidence of completion of coursework or training within the timeline specified for completion of the ordered coursework or training.

DATE: May 16, 2022



JAMI A. TEAGLE-BURGOS

Administrative Law Judge

Office of Administrative Hearings